

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 29

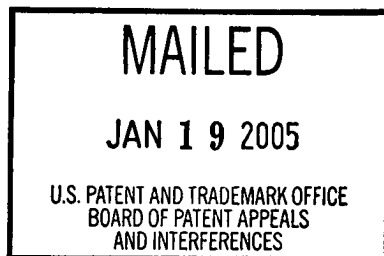
UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JAMES PRESCOTT CURRY



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Appeal No. 2005-0509  
Application No. 09/449,237

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NOTIFICATION OF NON-COMPLIANCE REGARDING ORAL HEARING

Subsequent to a Notice of Appeal filed on April 8, 2003 (Paper No. 20), appellant filed an Appeal Brief on October 8, 2003, (Paper No. 23). A two page transmittal letter was filed concurrently with the Brief (Paper No. 24). Page 2 of the transmittal letter reads in part "[t]he total fee due is . . . (appeal brief fee, **fee for request for oral hearing**, plus extension fee, if any)." (Emphasis added).

Subsequently, the fee for the oral hearing was charged to appellants' account. This sentence contains the only indication of a Request for Oral hearing in this application.

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As per 37 CFR § 41.47(b) (previously 37 CFR § 1.194(b))<sup>1</sup>, a request for an oral hearing must be filed in a separate paper.<sup>2</sup>

Since appellant's request for oral hearing was not filed in a separate paper as required by 37 CFR 41.47(b), a request for an oral hearing cannot be considered. However, the \$145 fee for the oral hearing which was submitted with the Notice of Appeal, is refundable under 37 CFR § 1.26 since it was paid by mistake or in excess of that required.

If appellant desires the \$145 fee to be refunded, a request for refund should be filed as soon as possible.

If appellant still desires an oral hearing, a petition under 37 CFR § 1.183 must be filed within two weeks of the mail date of this notice. Such a petition must include:

- (1) a request to suspend the separate paper requirement of 37 CFR § 41.47(b),
- (2) a showing of facts to establish that an extraordinary situation exists and that justice requires the separate paper requirement of 37 CFR § 41.47(b) be suspended or waived, and

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<sup>1</sup> See NOTICE OF RULE CHANGE attached.

<sup>2</sup> 37 CFR § 41.47(b) provides in pertinent part:

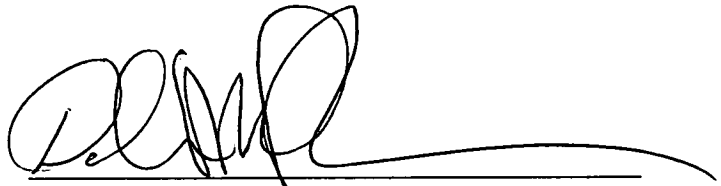
[i]f appellant desires an oral hearing, appellant must file, in a separate paper  
... a written request for such hearing accompanied by the fee set forth in § 41.20(b)(3) within two months from the date of the examiner's answer.

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(3) be accompanied by the petition fee set forth in 37 CFR § 1.17. This two-week time period for filing a petition under 37 CFR § 1.183 is not extendable under 37 CFR § 1.136(a)(1)(iv). The failure to timely file a petition under 37 CFR § 1.183 will result in the appeal being decided without an oral hearing (i.e., on brief).

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By:

A handwritten signature in black ink, appearing to read 'D. Shaw', with a long horizontal line extending to the right.

DALE M. SHAW  
Program and Resource Administrator  
(571) 272-9797

DMS/vsh

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cc: INTELLECTUAL PROPERTY GROUP  
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